Supreme Court, U.S.
FILED

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

AVA MAUREEN SAWYER, PETITIONER

vs.

DEAN S. WORCESTER
&
PRESTON E. CONNER, SR. AND
ESTATE OF PRESTON E. CONNER, SR.,
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

PETITION FOR WRIT OF CERTIORARI

AVA M. SAWYER
Counsel *pro-se* for Petitioner
4600 Owendale Road
Chester, Virginia 23831
Telephone: (804) 748-2589

QUESTIONS PRESENTED

I. WHEN STATE LAW PROVIDES ONLY ONE METHOD BY WHICH A CO-DEFENDANT IN EQUITY MAY PURSUE A CLAIM AGAINST ANOTHER PARTY TO THE CAUSE -- THAT BEING BY THE FILING OF A CROSS-BILL, DOES A STATE COURT SITTING IN EQUITY VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION WHEN, IN THE ABSENCE OF ANY CROSS-BILL HAVING BEEN FILED IN A CAUSE, THE COURT NONETHELESS *SUA SPONTE* DECLARES THE LEGAL RIGHTS OF THE CO-DEFENDANTS *INTER-SE*, AND BASED THEREON, ORDERS ONE CO-DEFENDANT TO PAY THE OTHER DEFENDANT $62,000.00 -- AND, IF SO, DOES SUCH VIOLATION OF THE FOURTEENTH AMENDMENT RENDER THE MONETARY AWARD GRANTED THAT DEFENDANT VOID *AB INITIO* AND SUBJECT TO COLLATERAL ATTACK?

II. WHEN CLEARLY-ESTABLISHED TENENTS OF STATE JURISPRUDENCE DICTATE THAT STATE COURTS HAVE NO JURISDICTION TO ADJUDICATE THE LEGAL RIGHTS OF PARTIES NOT ADVERSE TO EACH OTHER UNDER THE PLEADINGS IN A CAUSE, DOES A COURT OF EQUITY IN THAT STATE VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION WHEN, IMMEDIATELY SUBSEQUENT TO RULING IN THE TRIAL OF A CAUSE, IT 'ADJUDICATES' THE LEGAL RIGHTS

OF CO-DEFENDANTS TO THE CAUSE *INTER-SE* AND, BASED UPON SUCH ADJUDICATION, ORDERS ONE CO-DEFENDANT TO PAY THE OTHER $62,000.00 -- AND, IF SO, DOES SUCH DUE PROCESS VIOLATION RENDER SUCH MONEY AWARD VOID *AB INITIO* AND SUBJECT TO COLLATERAL ATTACK?

III. *ASSUMING ARGUENDO* A JUSTICIABLE CONTROVERSY BETWEEN CO-RESPONDENTS TO A STATE CIVIL CAUSE, DOES THE AWARD OF A MONEY JUDGMENT TO ONE DEFENDANT AGAINST ANOTHER DEFENDANT NONETHELESS VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION WHEN THE RULINGS AND 'FINDINGS' UPON WHICH SUCH AWARD IS BASED CONTRAVENE THE ALLEGATIONS OF THE DEFENDANT TO WHOM SUCH JUDGMENT IS AWARDED (AND THE OTHER DEFENDANT'S ALLEGATIONS AS WELL)?

IV. *ASSUMING ARGUENDO* A JUSTICIABLE CONTROVERSY BETWEEN CO-RESPONDENTS TO A STATE CIVIL CAUSE, DOES THE AWARD OF A MONEY JUDGMENT TO ONE DEFENDANT AGAINST THE OTHER VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION WHEN SAID AWARD IS PREDICATED UPON THE COURT'S ADJUDICATION OF "FACTS" AND ISSUES NOT IN CONTROVERSY IN THE CAUSE -- I.E., NOT PLEADED BY ANY *PARTY* TO THE CAUSE?

V. *ASSUMING ARGUENDO* A JUSTICIABLE CONTROVERSY BETWEEN CO-DEFENDANTS TO A STATE CIVIL CAUSE, DOES THE AWARD OF A MONEY JUDGMENT TO ONE DEFENDANT AGAINST THE OTHER VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION WHEN SUCH AWARD CONSTITUTES RELIEF NOT CLEARLY REQUESTED BY ANY PARTY TO THE CAUSE?

VI. *ASSUMING ARGUENDO* A JUSTICIABLE CONTROVERSY BETWEEN CO-DEFENDANTS TO A STATE CIVIL CAUSE, DOES THE AWARD OF A MONEY JUDGMENT TO ONE DEFENDANT AGAINST THE OTHER VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION WHEN NO EVIDENCE WAS ADDUCED TO SUPPORT *ANY* RULING FAVORABLE TO THE DEFENDANT TO WHOM THE MONEY JUDGMENT WAS AWARDED ON THE GROUNDS UPON WHICH SAID DEFENDANT HAD ASSERTED ENTITLEMENT TO COMPENSATION?

VII. DOES A STATE COURT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT WHEN IT *SUA SPONTE* 'ADJUDICATES' MATTERS WHICH COUNSEL FOR ALL PARTIES TO A CAUSE HAVE EXPRESSLY AGREED ARE NOT MATTERS IN CONTROVERSY AND NOT EVEN TO BE REFERENCED IN THE COURSE OF THE CAUSE?

VIII. WHEN A STATE COURT LITIGANT AGAINST WHOM A SEVERABLE MONEY JUDGMENT HAS BEEN ENTERED WAS NOT AFFORDED REASONABLE NOTICE OF THE FACTS AND ISSUES WHICH WERE

GOING TO BE ADJUDICATED BY THE COURT AND LIKEWISE NOT AFFORDED REASONABLE NOTICE THAT *ANY* SUCH ADJUDICATION WOULD TAKE PLACE, IS SAID SEVERABLE MONEY JUDGMENT VOID AB INITIO BECAUSE UNSUPPORTED BY JURISDICTION BECAUSE AWARDED IN VIOLATION OF THE REQUIREMENTS OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION?

IX. WHEN A STATE COURT DEFENDANT AGAINST WHOM A SEVERABLE MONEY JUDGMENT HAS BEEN ENTERED WAS NOT AFFORDED REASONABLE OPPORTUNITY TO BE HEARD AND PRESENT HIS/HER CLAIMS AND DEFENSES IN RELATION TO FACTS AND ISSUES ADJUDICATED AND/OR OTHERWISE DENIED A FAIR TRIAL, AND/OR AN IMPARTIAL TRIBUNAL, IS THE SAID MONEY JUDGMENT VOID *AB INITIO* AS UNSUPPORTED BY JURISDICTION BECAUSE THE MANDATES OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION HAVE BEEN TRANSGRESSED?

X. WHEN, WITHOUT PRIOR WARNING, A STATE COURT SITTING IN EQUITY WITHOUT A JURY, *SUA SPONTE* CONDUCTS A TRIAL AS BETWEEN THE DEFENDANTS TO A CAUSE, DOES A RESULTANT MONEY AWARD TO ONE SUCH DEFENDANT VIOLATE THE OTHER DEFENDANT'S U. S. CONSTITUTIONAL SEVENTH AMENDMENT RIGHT TO THE TRIAL BY JURY -- AND, IF SO, DOES SUCH SEVENTH AMENDMENT VIOLATION RENDER THE SAID MONEY JUDGMENT VOID *AB INITIO*?

XI. WHEN, BY STATE STATUTE, EVERY STATE COURT DEFENDANT TO A CAUSE IN EQUITY IS ENTITLED TO REQUEST THAT SPECIFIC ISSUES BE DETERMINED BY A JURY 'OUT OF CHANCERY,' AND A STATE COURT SITTING IN EQUITY WITHOUT JURY, WITHOUT PRIOR WARNING SUA SPONE CONDUCTS A TRIAL A BETWEEN THE DEFENDANTS TO A CAUSE, DOES AWARD OF A MONEY JUDGMENT TO ONE DEFENDANT VIOLATE THE OTHER DEFENDANT'S U. S. CONSTITUTIONAL FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS OF LAW BECAUSE THE DEFENDANT AGAINST WHOM THE JUDGMENT WAS AWARDED WAS THEREBY DEPRIVED OF OPPORTUNITY TO SUBMIT REQUESTS FOR THE ADJUDICATION OF SPECIFIC ISSUES BY JURY -- AND, IF SO, DOES SUCH FOURTEENTH AMENDMENT VIOLATION RENDER THE SAID MONEY JUDGMENT SUBJECT TO SUBSEQUENT COLLATERAL ATTACK?

XII. DOES A STATE COURT OFFEND THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT WHEN, IN UPHOLDING THE VALIDITY OF A JUDICIAL DECREE CHALLENGED AS VOID *AB INITIO* BECAUSE BEYOND THE PLEADINGS IN THE SUBJECT CAUSE, IT CONSTRUES THE COMPLAINT IN THE CAUSE IN A MANNER CONTRARY TO THE MANNER IN WHICH THE COMPLAINT WAS CONSTRUED BOTH *PRE*-TRIAL *AND AT THE TRIAL* OF THE CAUSE BY ALL PARTIES AND THE COURT?

XIII. PARTICULARLY WHEN STATE LAW REQUIRES THAT A CIVIL COMPLAINT "CLEARLY" STATE "THE TRUE NATURE" OF ONE'S CLAIM, DOES A STATE COURT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT WHEN IT AWARDS RELIEF NOT CLEARLY REQUESTED BY A COMPLAINANT -- AND IF SO, IS SAID AWARD VOID *AB INITIO*?

XIV. WHEN A SEVERABLE ORDER IN A STATE CIVIL COURT DECREE IS COLLATERALLY ATTACKED AS BEYOND THE ISSUES IN CONTROVERSY IN A CAUSE, DOES A STATE COURT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT?

XV. THE COURT ERRED IN UPHOLDING THE COURT ORDER TO SAWYER TO PAY WORCESTER $62,000.00 ON THE BASIS OF CONNER'S BECAUSE SUCH PRAYER DID NOT CLEARLY AND SPECIFICALLY REQUEST A DETERMINATION OF THE CO-RESPONDENT'S RELATIVE RESPECTIVE RIGHTS TO THE CONTINGENCY FEE THAT HAD BEEN EARNED.

XVI. DOES A COURT VIOLATE THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE BY CONSTRUING POST-TRIAL A COMPLAINANT'S PRAYER FOR A JUDICIAL DETERMINATION OF THE REASONABLE ATTORNEYS FEES TO BE PAID TO "EITHER OR BOTH" OF THE ATTORNEYS FOR A CONTINGENCY LEGAL REPRESENTATION

RECEIVED AS ONE REQUESTING A DETERMINATION OF THE SUMS TO WHICH "EACH" ATTORNEY WAS ENTITLED AND THE SUM OWED BY ONE ATTORNEY TO THE OTHER TO SUSTAIN THE VALIDITY OF THE TRIAL COURT'S *SUA SPONTE* ADJUDICATION OF ONE DEFENDANT ATTORNEY'S LEGAL RIGHTS AGAINST THE OTHER, EVEN IF FOR NO OTHER REASON THAT THAT SUCH A RULING IS SO ARBITRARY AND UNFORSEEABLE?

XVII. IS THE AFFORDING OF THE DUE PROCESS OF LAW A JURISDICTIONAL REQUISITE TO THE VALIDITY OF A COURT ORDER AND CONSTITUTE GROUNDS FOR A COLLATERAL ATTACK THEREON.

XVIII. ARE VARIOUS DEPRIVATIONS OF DUE PROCESS OF LAW AND/OR THE DEPRIVATION OF ONE'S RIGHTS TO TRIAL BY JURY AND/OR OF OPPORTUNITY TO SEEK ISSUES OUT OF CHANCERY JURISDICTIONAL OBJECTIONS TO THE VALIDITY OF A MONEY AWARD GRANTED TO A CO-DEFENDANT AGAINST ANOTHER TO A CAUSE AND SUBJECT TO VACATION ON SUCH GROUNDS.

XIX. MAY ONE PROPERLY BE CONVICTED OF CONTEMPT OF COURT FOR FAILURE TO RESPOND TO DEBTOR INTERROGATORIES WHEN THE ONLY DEBTOR INTERROGATORY PROCEEDING WITH WHICH SHE HAS *EVER* BEEN SERVED NOTICE WAS ISSUED OUT OF A FICTITIOUS CAUSE, CONSISTENTLY WITH THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT?

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OPINIONS BELOW

The opinion of the highest state court called upon to review this cause appears in the Appendix to this Petition. The said ruling is unpublished.

JURISDICTION

The date on which the highest state court decided my case was January 9, 2004. A copy of that decision appears at Appendix A. A timely Petition for Rehearing was thereafter denied on the following date: March 16, 2004, and a copy of the Order denying a rehearing appears at Appendix K.

On July 15, 2004, the Clerk of this Honorable Court issued a letter granting Your Petitioner an additional 60 days within which to file a corrected Petition for Certiorari in this cause.

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTION OF THE UNITED STATES,
AMENDMENT XIV

CONSTITUTION OF VIRGINIA, ARTICLE I,
SECTION 11

VIRGINIA CODE ANNOTATED (1950), AS AMENDED
SECTIONS 8.01 -336

RULES OF THE SUPREME COURT OF VIRGINIA
RULES 1:4, 2:12, 1:13, AND 2:14

THE PERTINENT TEXT OF THE FOREGOING PROVISOS ARE SET OUT IN THE APPENDIX.

STATEMENT OF THE CASE

In the early 1990's, Your Petitioner, Ava M. Sawyer, was a Fairfax attorney then primarily practicing law as a solo practitioner in Loudoun County, Virginia. Shortly after attaining a locally renowned 'underdog' victory in an extremely hard-fought Loudoun County realtor fraud case, Sawyer was contacted by an attorney in a distant jurisdiction with which she was completely unfamiliar (and in which she had absolutely no interest in practicing law). The attorney implored Sawyer to come out to his area to represent an elderly man, Preston Conner, Sr., in a fraud suit for rescission of real estate sales contracts by which Conner had sold 82 acres in Frederick County, Virginia. The attorney informed Sawyer that he was calling her not only because he had heard of her victory in the Loudoun County realtor fraud case, but also because no attorney practicing in the Frederick County/Winchester area would represent Mr. Conner due to the identities of the individuals who had defrauded him -- one a very wealthy local real estate broker, and the other an attorney who was part of a *very* small circle of local power elites "who controlled absolutely *everything* in the Winchester area" and "*definitely* 'in'" with "the Courthouse crowd" (referencing the local Judges and Clerks of Court). The attorney, E. Scott Smalley, Esq., also apprised Sawyer that he was contacting her on a very 'short time fuse' because Conner needed to act very quickly, citing facts evincing the urgency of the situation, and explaining that the non-local attorneys to whom he had previously referred Conner's representation had -- after several months to investigate the matter -- *just* declined to represent him, stating that they evaluated the liability of the prospective defendants as "weak."

In view of Sawyer's reluctance to involve herself in the matter, Conner's local attorney also pressed upon Sawyer that not only had *Conner* been grossly wronged, but the realtor involved in the matter had been taking advantage

of elderly people in the area for many years and, recounting an example or two, stated that, because no local attorney was ever willing to 'take him on,' the realtor had just continued to 'get away with' such abuses.

Finding it reprehensible that no local attorney was willing to represent the elderly man solely because of the identities of the prospective defendants, Sawyer ultimately agreed to *consider* representing Conner, albeit with considerable misgivings.

Upon thereafter traveling out to interview Conner, his local attorney, and Conner's middle-aged lady friend, Ms. Funk, Sawyer became very dubious about the veracity of several highly relevant factual assertions Conner was making, to wit: that he had not been aware of the actual content of the various contracts he had signed until he read them *after* signing them, and that the attorney and/or the realtor had *on each occasion* previously verbally misrepresented to him the content of the contracts he had signed. * Nevertheless, Sawyer did ultimately become convinced that very real unfair advantage had been taken of Conner, in view of Conner's then apparent *continuing* lack of appreciation of the true impact of a very disadvantageous provision in the final sales contract he had executed.

By his final contract of sale, Conner had sold his 82 acres to the defendants as purchasers under a unregistered fictitious name for a value of approximately $7,329 per acre. The day after that sales contract was executed, the realtor and attorney sold 40 of those 82 acres to the local School

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* Conner's only explanation for having repeatedly signed contracts he had not read *after* being aware that the realtor or attorney had *previously* misrepresented the content of contracts he had signed was 1) the harried circumstances under which he had been presented the various contracts for execution, and 2) the fact that he had been in acute pain at the time some of those contracts had been presented to him for signature. (Conner's underlying physical problem had later been corrected by a surgical procedure.)

Board, for the construction of a second high school in the County, for $16,500 per acre.

Conner's local attorney, Smalley, was known to Sawyer to be a real estate attorney also significantly involved in zoning and litigation matters in that area. At her interview with Smalley, Conner, and Ms. Funk, Smalley represented to Sawyer *as a matter of fact* that, in light of the sale to the School Board, the other 42 of the 82 acres were worth between $20,000 to $25,000 per acre (assertions which were corroborated by Mr. Conner). Nevertheless, it was *only* because Conner began to *plead* with Sawyer to help him before she could exit Smalley's office that Sawyer ultimately relented and agreed to help Conner. [Sawyer had realized at that meeting that the statute of limitations was going 'to run' on Conner's most viable claim for relief *within just three workdays* and -- from what Conner, Smalley, and Ms. Funk *all* told her at the meeting -- it was clear that if *SAWYER* didn't help Conner, *NO ONE* would!]

Sawyer thereafter convinced Dean S. Worcester, a Loudoun County litigator with whom Sawyer was at that time romantically involved, who had accompanied her to the Conner interview, to associate as her co-counsel in the matter. Sawyer and Worcester agreed that Sawyer would primarily handle the case, but that Worcester would serve as lead *trial* counsel if the matter ultimately went to trial. Although there was no specific discussion between them respecting the manner in which any fees as might be earned would be distributed between Sawyer and Worcester's law firm, their practice when working together on legal matters was to distribute any fees received according to their respective efforts in any given matter (although it was also Sawyer's habit to assure that Worcester was paid first).

With Worcester's consent, Sawyer drafted Conner's contingency fee contract to provide for *much less* than even a

mere 1/3 contingency fee agreement. * Sawyer then forwarded the draft fee agreement to Conner and his lady friend for consideration. After they had had several days to review and discuss the draft, both Conner and Ms. Funk verbally stated
to Sawyer that each had reviewed, and that each understood, the content of the contract, and that *neither* of them had any objections or concerns in relation to *any* of its provisions. Both Conner and Ms. Funk then executed a written statement to that effect, and Conner signed the fee agreement.

At the *very* outset of their legal representation of Conner, Sawyer and Worcester met with Conner and Ms. Funk again, and *ALL* agreed that the lowest all-cash settlement offer that would be made, or considered, in Conner's rescission fraud suit would be $1,200,000.00. Conner, Sawyer and Worcester *also* agreed at that same time that Sawyer and Worcester were to hold to that $1,2000,000.00 figure unless and until future developments were to indicate that that figure should

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* Although such was *not* apparent *on the face* of Conner's fee contract, Conner's contract was for *MUCH LESS* than the 1/3 contingency figure referenced therein because the contract was written so that the 1/3 contingency legal fee would be calculated *only* upon monies received by Conner *in excess of $12,195.00* per acre upon the re-sale of any realty as might be returned to him as a result of the attorneys efforts. *However*, Conner had *sold* his property to the Defendants for a value of only approximately $7,300.00 per acre! [Conner had only originally *HOPED* to sell his property for $12,195.00 per acre!] *Accordingly*, Sawyer wrote a tremendous windfall into Conner's fee contract whereby Conner would potentially receive *several hundreds of thousands of dollars* of value as a result of his contingency legal service *before any contingency fee* for that service would *even begin* to accrue!

be reconsidered and that, should that time come, Sawyer, Worcester and Conner would all meet together again to re-evaluate their 'bottom-line' in terms of settlement in the matter.

Those agreements notwithstanding, some months later, following some very discouraging discovery in the case, Worcester -- disenamored of the case and then no longer engaged to Sawyer -- *unilaterally* made a settlement offer to opposing counsel to settle Conner's case *for less than $700,000.00*! Only *then* did Worcester telephone Sawyer to apprise her that he had made that offer to opposing counsel. Stunned, Sawyer -- who had performed the *VAST* bulk of the work in the case and virtually *all* interaction with the client -- and who *knew* that Conner was still unwilling to settle his case for any such figure, * responded that Worcester must withdraw his unauthorized settlement offer before that offer could be accepted by the defendants. ** Although *quite* angry at being thwarted in his effort to rid himself of Conner's inconvenient 'bad' case, Worcester ultimately nonetheless did withdraw his offer. However, Worcester then, by letter, abruptly resigned from Conner's contingency case and forwarded to Sawyer, along with his letter of resignation, a Withdrawal Decree for execution, and did so without first discussing his decision to withdraw from the case with either Conner *or* Sawyer.

Both Sawyer and Conner immediately agreed to Worcester's withdrawal from the case. Moreover, as Sawyer promptly apprised Worcester, Conner even

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* As *both* Worcester and Conner were aware, *considerable* additional discovery remained to be accomplished before any definitive re-analysis of the merits of Conner's case could be made.

** Although Sawyer was certain that Conner was not yet willing to accept such a settlement -- one which would have basically just constituted 'throwing in the towel' on the case -- Sawyer nonetheless immediately telephoned Conner and verified that Conner *had* not -- and *did* not -- approve of such an offer.

executed Worcester's Withdrawal Decree within the week. *

A few days later, Worcester hand-delivered to Sawyer all of the files relating to Conner's contingency litigation previously retained in his office. Worcester was never thereafter involved in Conner's contingency litigation. Moreover, Worcester never asked to rejoin the case, and neither Sawyer nor Conner ever asked Worcester to rejoin the case. **

Thereafter, but before any court appearance was ever made in the cause, Sawyer achieved a settlement of Conner's

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* Nonetheless, because Sawyer believed that Worcester had, by his unauthorized offer, likely *severely* damaged -- *if not totally obviated* -- *any* chance Sawyer would *ever* have at obtaining *any settlement* of the case (she believing that the Defendants would likely thereafter *always* think that Worcester's offer was *actually* Conner's 'bottom-line'), Sawyer specifically asked Worcester if she could delay forwarding his Withdrawal Decree to opposing counsel for endorsement -- and, therefore, to the Court for entry -- until Sawyer had exhausted all of *her* efforts at settlement in the case, since forwarding Worcester's Withdrawal Decree to opposing counsel would only *further* telegraph to him that Conner's own attorneys were losing confidence in Conner's case. Worcester readily agreed to such a delay, subject only to the condition that, *regardless* of whether Sawyer had exhausted her efforts at settlement by such time or not, Sawyer must present Worcester's Withdrawal Decree to the Court for entry before the commencement of oral argument at the first court appearance in the matter. Sawyer, in turn, readily agreed to Worcester's condition, and thereafter even conveyed to Worcester Conner's thanks for his agreeing to such a delay in the forwarding of his Withdrawal Decree for execution by opposing counsel and the court.

** In fact, until *after* Sawyer later attained a settlement in Conner's contingency litigation, the only further discussion between Worcester and Conner or Sawyer in *any* manner related to Worcester's withdrawal from Conner's case consisted solely of a passing inquiry by Worcester some weeks later as to whether or not Sawyer had joined in another particular attorney as co-counsel in the case, and Sawyer's response that she had not asked that attorney -- nor anyone else -- to join her as co-counsel in the matter, and that she was planning to conduct the trial of Conner's case by herself [*regardless* of how stressful Sawyer found trial work to be].

contingency fraud suit by which Conner received almost $700,000.00 in cash *PLUS* the return to him of the 42 acres not previously sold to the School Board. Conner and his lady friend were ecstatic over the settlement, and Conner's local attorney, Smalley, appraised Conner's settlement as nothing short of absolutely "excellent." **

** After Sawyer later told Worcester about the settlement she had attained, Worcester, appearing surprised, congratulated Sawyer, but he in no manner even intimated that he felt entitled to any compensation for his prior service to the cause. However, even having always known that Worcester was not *entitled* to *any* compensation for his former service to Conner's contingency litigation [he having abandoned a contingency cause before a successful result had been achieved -- see, 7 Am Jur 2d Attorneys at Law, Section 281], Sawyer thereafter nevertheless decided to offer to pay Worcester as much as what Sawyer estimated to be three or more times Worcester's hourly rate for the hours he had expended in relation to the case. Accordingly, Sawyer thereafter broached the subject with Worcester and, volunteering to compensate him for his prior service, asked him to think about what he would consider a fair payment and to then let her know his thoughts on the matter. Worcester's response, however, was to commence to assert *VERY* unseemly claims and threats against Sawyer and *DEMAND* that Sawyer pay him as much as 45% (then 33%, then 25%) of the contingency fee she had earned (-- and even though Worcester had performed only a *very* small fraction of the work in the cause *even before* he quit the case!) [The original basis Worcester asserted for his 'demands' against Sawyer was that, because Sawyer had not associated *other* co-counsel in the case -- and therefore did not have to share her fees with *anyone else* -- she had to share them with *him*! Worcester's verbal claims thereafter alternated between completely contradictory assertions: Worcester initially *readily* admitted that, as a result of his abandonment of the case, *Conner* didn't owe him *"anything"* but asserted that *Sawyer* owed him the sum he *would* have received as fees *had he not* quit the case -- stating that it was, somehow, *Sawyer's* 'fault' that he had quit (and insinuating that he would make ugly accusations against Sawyer if she did not acquiesce in his demands). Notably, however, Worcester had *continued* working with Sawyer on *other* matters *after* he quit Conner's case. On the other hand, Worcester *also* commenced to recite to Sawyer various

-- FOOTNOTE CONTINUED ON NEXT PAGE --

Because of Worcester's abandonment of his case, even though Conner was well aware that Worcester had, after hearing of the settlement Sawyer had achieved, begun to assert exorbitant 'demands' for compensation, Conner nevertheless expressly authorized Sawyer to disburse *solely to herself ALL* of the contingency fees known to be due under his contingency fee agreement, and Sawyer accordingly did so.

The contingency fees so disbursed to Sawyer related, however, *only* to Conner's receipt of the almost $700,000.00 in cash Conner had received under his settlement, as those were the only attorneys fees calculable as due under Conner's contingency fee agreement until such time as the 42 acres obtained for him could be sold. It remained undetermined, what, *if any*, additional contingency fees would be due as a result of the return of the 42 acres to Conner.

Immediately after Sawyer obtained her verbal settlement of Conner's contingency rescission litigation, however, Conner had commenced to indicate that he did not want to comply with the provision in his fee contract which required him to forthwith sell any such realty as might be returned to him.

Although quite annoyed by Conner's having previously readily agreed to that provision despite his rather clearly not having intended to abide thereby, Sawyer nonetheless readily waived that contractual proviso. However, Conner *then* proved himself *also* unwilling to comply with the proviso of his fee contract which required him to execute an attorneys' lien in relation to any realty returned to him (in order to

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FOOTNOTE CONTINUED FROM PRIOR PAGE:
misrepresentations he could make to support a claim that he had not '*actually*' quit Conner's case -- misrepresentations in respect to which Worcester's claims could only constitute his word against Sawyer's.

After several failed efforts to discuss the matter with Worcester amicably and rationally, Sawyer eventually 'washed her hands' of her endeavors to placate Worcester, and disengaged from any further effort to amicably resolve his varying threats and demands against her.

secure the payment of any attorneys fees as might ultimately be payable in relation thereto). Conner insisted instead that he just wanted to settle with Sawyer via an additional cash payment to her. However, as Sawyer repeatedly explained to Conner, A) it was impossible to determine the contingency fee payable in relation to the 42 acres absent a sale of the property because that acreage was *so singularly* uniquely situated, B) Sawyer *did not want even to try* to negotiate any alternate settlement with Conner, and C) *ALL* that Sawyer wanted was for Conner to just abide by his agreement and execute a lien, and she would just wait and see what, if any, additional fees she would receive when the property was eventually sold. Moreover, in response to Conner's simultaneous ongoing protests that he did not need a lawyer to help him settle the matter with her, Sawyer likewise repeatedly insisted that she could *not possibly* negotiate any 'buy-out' with Conner in respect to her rights to compensation *vis-a-vis* the 42 acres *anyway* unless Conner *was* represented by other counsel.

Sawyer not being willing to waive the attorneys lien proviso of her fee contract, and Conner being unwilling to execute any lien, Sawyer did not disburse to Conner the final approximate $100,000.00 remaining in her attorney trust account awaiting a resolution of the 'lien' issue. As a result, Conner eventually agreed to retain counsel to try to negotiate a buy-out of Sawyer's rights to compensation in relation to the 42 acres of improved realty she had obtained for him under his litigation settlement. He then decided to ask Smalley to represent him in that regard.

However, Smalley only attempted to intimidate Sawyer -- via leveling various slanderous accusations/insinuations against her * and other outrageous claims,

* As *one* example, in a *VERY* denigrating tone, insinuating that Sawyer had greatly overreached Conner and acted unethically, Conner's attorney *first* accused Sawyer *"you SHOULD* have offered to take Conner's case on an hourly fee basis!" [However, Sawyer *HAD* initially offered to take Conner's case on an hourly fee basis, and Conner had -- without *any* hesitation *whatsoever* -- *flatly* refused that offer!]

** so as to avoid having Smalley's malicious assertions *publicly* levied against her via lawsuit),* into not only foregoing *all* right to attorneys fees in relation to the 42 acres which had been obtained for Conner, but also into refunding a flat fee Conner had paid to Worcester and Sawyer for the considerable legal services Conner had received *in addition to* the pursuit of his contingency fraud rescission litigation.

Even though immediately overwhelmed by severe depression, because "a good name is rather to be had than great riches," Sawyer felt that, in view of the aspersions Smalley had cast against her, she could not possibly settle the matter cheaply enough to satisfy Smalley because to do so would indicate that there was some merit to his accusations. Moreover, absent a retraction of Smalley's accusations against her, Sawyer perceived need for a public vindication of Smalley's aspersions against her anyway. ** Despite a long wait, however, no such retraction from Smalley was ever forthcoming, and finally, approximately a year and a half later, Smalley's 'hardball' tactics having failed to accomplish their intended goal, Smalley prepared a Petition for Conner, filed in the Circuit Court of Frederick County, Virginia, seeking rescission of Conner's attorneys fee agreement * and, if granted, a judicial declaration of the 'reasonable' legal fee for Conner's contingency representation.

Although Conner's written fee agreement had been executed by Sawyer, and by Worcester on behalf of his

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* For *example*, even though, *to induce* Sawyer *to take* Conner's case for rescission of his sales contracts, Smalley had *himself*, a year and a half earlier, represented to Sawyer the value of the remaining 42 acres to be between $20,000.00 and $25,000.00 per acre -- and *only extremely positive* developments had transpired in relation to that property since that time [to wit: it had attained public road frontage, public water, and public sewer]-- Smalley *then* asserted that the property was *actually* worth no more than 'cow pasture,' to wit: that the property was basically worth *no more* than the value Conner would have received for the property *under the sales contract Conner had retained Sawyer to have rescinded*!

former law firm, Conner named only Sawyer and Worcester as Respondents to his rescission suit.

A Judge was thereafter specially designated to adjudicate Conner's suit for rescission of his attorneys fee agreement, which cause was designated In Chancery # 93-149 by the Frederick County Circuit. *

The Rules of the Supreme Court of Virginia regulate the civil practice of law in the Circuit Courts of the Commonwealth of Virginia. Those Rules require that the "true nature" of one's claim in a cause must be "clearly" stated. [See, Rule 1:4 (d)]

Moreover, the Rules of the Supreme Court of Virginia provide only one method by which defendants to a chancery cause may attain affirmative relief in the cause, that being by the filing of a Cross-Bill [against either the Complainant(s) and/or Co-Defendant(s)]. [See, Rules 2:13 & 2:14]

Even though Worcester, Sawyer's named Co-Defendant to Conner's fee contract rescission suit, had never been paid *any* monies for his service to Conner's contingency litigation, and *all* the legal fees known to be due in the matter had been paid to Sawyer a year and a half earlier, Worcester filed no Cross-Bill in Conner's rescission suit -- NO Cross-Bill against Conner for fees, and NO Cross-Bill against Sawyer under *any* theory. In Worcester's Answer to Conner's Complaint, however, Worcester stated that he was entitled to the *quantum meruit* of the service he had rendered. Moreover, in a written document Worcester filed in the cause entitled simply "Notice," Worcester stated that he claimed a lien for attorneys fees and that his claim was one for fees at his hourly rate.

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* Notably, not only did Smalley's prior slanderous accusations/ insinuations against Sawyer did not even make their way into Conner's Complaint, Conner's Petition did not even *state a cause of action* for rescission! Conner's Complaint, at most, just very craftily falsely *insinuated* that *Conner was incompetent*! (When Smalley was later called to testify about that 'allegation,' however, Smalley even admitted *under oath* that Conner had *NOT* been incompetent.)

Sawyer filed no Cross-Bill against Worcester in the cause, and no Cross-Bill against Conner in *any* manner related to a distribution of Conner's legal fees between her and Worcester. Sawyer did, however, file a pleading styled "Demurrer and Motion to Dismiss Worcester as a Party Respondent." In that pleading, Sawyer asserted that Worcester had abandoned Conner's contingency representation and was therefore not entitled to any of Conner's contingency fees, and that Worcester had no legitimate interest in the outcome of Conner's suit for rescission of the attorneys fee agreement and should be dismissed as a party to the cause.

Approximately two years after Conner filed suit, at the *only* pre-trial adjudicatory proceeding conducted in the cause (which was encompassed within the Court's "Pre-Trial Conference"), Worcester's counsel vehemently objected that Sawyer's Demurrer and Motion to Dismiss Worcester as a Party should not be adjudicated by the Court because there was absolutely no issue between Worcester and Sawyer in controversy in the cause and thereafter no issue whatsoever involved in the case relating to the proper allocation of Conner's contingency fees amongst the attorneys. Upon Worcester's aforesaid objection, and Conner's acquiescence therein -- and *without* affording Sawyer *any* opportunity to address Worcester's objections -- Conner's Judge Designate immediately directed Sawyer to withdraw her Demurrer/Motion, and Sawyer accordingly did so.

However, after having witnessed the *astoundingly* hostile manner in which Conner's Judge Designate had acted towards Sawyer at the "Pre-Trial Conference," * Worcester's

* The Judge's overt hostility towards Sawyer was evinced even from the very inception of the "Pre-Trial Conference." Such hostility, however, could *not* be explained by *any* 'past history' between Sawyer [*or* her co-counsel] and the Judge. In point of fact, Sawyer had *never even heard of* Conner's Judge Designate before he was specially appointed to adjudicate Conner's suit, and she had neither seen nor

-- FOOTNOTE CONTINUED ON NEXT PAGE --

counsel *thereafter* began to say that Worcester was *then* thinking about filing a Cross-Bill against Sawyer in the cause after all. As Sawyer pointed out, however, it was *MUCH* too late at *that* point for Worcester to file any Cross-Bill in the case, as it was then only a few weeks before the trial of the cause, and Conner's Judge Designate had made it clear that no continuance of Conner's trial would be granted in the matter -- at least not absent *THE MOST* extraordinary of circumstances. Worcester's counsel countered that he might ask Conner's Judge Designate to allow him to file a Cross-Bill against Sawyer to be adjudicated *after* the trial on Conner's Complaint *OR* that he might file a *separate* suit against Sawyer *and ask Conner's Judge Designate to have himself assigned to hear that suit as well*! Sawyer, of course, responded that Conner's suit would be *over* once the trial was concluded, and that not only would she *not agree* that Conner's Judge Designate should be asked to hear *any* prospective suit against her, it would be *entirely* inappropriate and/or unethical for Worcester or his counsel to approach Conner's Judge Designate to ask him to have to himself appointed to hear *any* suit.

FOOTNOTE CONTINUED FROM PRIOR PAGE:
spoken with him prior to the "Pre-Trial Conference." *Furthermore,* Sawyer enjoyed an excellent reputation with the Courts and attorneys in the jurisdictions in which she had practiced law, and, accordingly, Conner's Judge could not have been prejudiced against her by virtue of some 'bad reputation' having preceded her. [For example, in less than ten years in the practice of law, Sawyer had been: A) appointed by the Chief Judge of the Fairfax Circuit Court (a Circuit of *thousands* of attorneys) to serve as one of only six members of the Circuit's Bar Applicant Character Review Committee, B) named as the first female partner in a very prestigious Fairfax law firm, C) honored as an "Outstanding Woman Attorney of Virginia" by the then newly formed Women's Bar Association of Virginia [even though Sawyer was not really involved with that organization], and D) after launching out into solo practice, Sawyer had been appointed by a subsequent Chief Judge of the Fairfax Circuit Court [The Honorable William G. Plummer] to serve as one of only ten attorneys in the Circuit serving as Commissioner in Chancery to the Chief Judge.]

Thereafter, at Worcester's belated deposition in the cause, Sawyer asked Worcester a question to ascertain whether or not Worcester had ultimately decided to claim that he had *not* abandoned Conner's contingency litigation. Conner's counsel, however, angrily objected to *any* discovery being conducted by Sawyer in relation to Worcester's assertions of entitlement to compensation, and then threatened to terminate Worcester's deposition and seek a protective order from the Court prohibiting Sawyer from asking any such questions on the grounds that Conner had placed absolutely *NO* issue in controversy in the cause relating to the appropriate distribution of his contingency fee between the attorneys, and the attorneys' varying claims of entitlement to the contingency fee had *NOT* been made part of the litigation. Conner's attorney then vehemently exclaimed that Conner did not care *who* got his fees and that he was *not* going to waste Conner's money by sitting around at a deposition while Worcester and Sawyer were fighting over who would "get paid what."

Neither Sawyer, Worcester, nor either of their attorneys disputed the accuracy of Conner's attorney's position. Moreover, Sawyer, Worcester, and all the attorneys to the cause agreed that Conner should not, to any unnecessary extent, be 'drug into' any dispute between Worcester and Sawyer over their respective rights to Conner's contingency fee. *Nonetheless,* Sawyer refused to abandon her line of questioning of Worcester without first contacting the Court about the matter *UNLESS ALL parties and counsel* would agree that *absolutely no mention or reference whatsoever* to *any* dispute between Worcester and Sawyer would thereafter in *any* fashion be made in the course of the cause -- *or* to the Judge Designate -- until *AFTER* the conclusion of the trial of the cause. [Absent such an agreement, Sawyer was unwilling to voluntarily forego her one possible opportunity to ascertain the nature of Worcester's prospective claim(s) -- and the factual allegations he would be making in support of

any such claim(s) -- absent a definitive pronouncement from the Judge Designate delineating the extent to which he would thereafter permit additional issues to be introduced into controversy in the case. *]

In settlement of the matter, Worcester, Sawyer, and *ALL* counsel to the cause *did* enter into express stipulations that absolutely no mention or reference to *any* matter prospectively in dispute between Worcester and Sawyer would thereafter be made in *any* fashion in the cause until after the conclusion of the trial, and also that, in the event Worcester and his counsel *were to* ultimately decide to ask Conner's Judge Designate to adjudicate Worcester's prospective claim for compensation, they would nonetheless *not* ask the Judge to do so until *after* the conclusion of the trial in Conner's rescission suit *regardless* of whether they ultimately decided to proceed by trying to file a Cross-Bill at *that* point or by filing some separate suit. [Notably, ALL agreed to those stipulations even though Sawyer made it clear that her position would *continue* to be that it would be *too*

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* Sawyer's position in such regard resulted from Sawyer's continuing concern that Worcester might yet, even at that late date, try to file some extremely belated Cross-Bill in the cause -- even though, at *that* point, she would *not* have been concerned about such a possibility had *ANY OTHER* Judge been presiding over the cause. However, in view of the Judge's prior *ASTONISHINGLY* injudicious behavior towards her, Sawyer *WAS* concerned that *HE* might allow such a Cross-Bill to be filed *despite* the fact that such would result in Sawyer being deprived of all opportunity to conduct discovery of Worcester in relation to the nature of Worcester's claim(s) and allegations in support.

[Not only had Conner's Judge Designate acted, without cause, in *VERY* unseemly fashion towards Sawyer at the Pre-Trial Conference, Sawyer's *sole* interaction with Conner's Judge Designate following the "Pre-Trial Conference" had only buttressed her concerns respecting his overt hostility towards her: After Conner's attorney had refused to respond to *even one* of Sawyer's written discovery requests (requests which consisted only of relevant interrogatories and requests for admission), Conner's Judge Designate had -- without *ANY* reason or justification therefor -- *simply refused to schedule any hearing* on Sawyer's Motion to Compel responses from Conner!

late for Worcester to *then* file any Cross-Bill in the cause, and *also* that it would be unethical for Worcester or his counsel to ask Conner's Judge to have himself appointed to hear *any* other suit.]

Worcester, Sawyer and both of their attorneys *also* specifically agreed that day that, *regardless* of the forum in which any claim of Worcester to compensation might ultimately be filed, any such claim would *only* be set for adjudication *after* Sawyer had had full reasonable opportunity *following* the trial in Conner's fee contract rescission suit to conduct discovery of Worcester. *

In reliance upon all of the aforesaid stipulations of counsel, Sawyer thereupon abandoned all attempts to ascertain the nature of Worcester's prospective claim(s) and the factual allegations Worcester intended to assert in support.

NONETHELESS, in *FLAGRANT* violation of the foregoing stipulations of counsel -- *and without any notice whatsoever to Sawyer or her co-counsel* -- *on the morning of the first day of Conner's trial*, before the time the trial was scheduled to commence, Worcester and his attorney met with Conner's Judge Designate *ex-parte* and asked the Judge to accept as filed in the cause a Cross-Bill Worcester had prepared against Sawyer.**

Although Conner's Judge Designate refused Worcester's tender of the Cross-Bill, responding that *HE* was "*not the Clerk*" [of Court], he nonetheless then stated, in the very same conversation, that he knew that Sawyer and Worcester

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* In abundance of caution, Sawyer had insisted on that specific additional stipulation of counsel not only because a discovery cut-off date had previously been set in Conner's suit, but also to make certain that, *should* Conner's Judge Designate *actually allow* Worcester to file a *post-trial* Cross-Bill in the cause, the date for trial on that Cross-Bill could not be scheduled so quickly that Sawyer would be deprived of opportunity to fully pursue discovery of Worcester.

** Under Virginia procedural law, Cross-Bills may only be filed with leave of Court after 21 days from service of process upon a defendant.

had not had any opportunity to perform discovery between themselves, and that Sawyer and Worcester should therefore go on and conduct their discovery of each other and then call him in six months, and he would at *that* time schedule a trial date on Worcester's Cross-Bill against Sawyer. *

Worcester's proposed Cross-Bill was, however, *never filed* with the Court. Moreover, Sawyer was never supplied a copy, and to this very date she does not know its content.

Later that same morning, after opening arguments, but *before any* evidence was heard in the case, and *without* stipulations of counsel to support any such declarations, Conner's Judge Designate called all counsel in the cause into chambers -- *except specifically* excluding Miss Sawyer, who was co-counsel of record for herself -- and there announced that he was going to award rescission of Conner's fee contract and that he was going to award as the "reasonable" fee for Conner's contingency representation the sum Conner had previously paid to Sawyer in relation to the monetary proceeds Conner had received under his litigation settlement. The Judge then *further* announced that he was going to require Sawyer to repay to Conner the $10,000.00 flat fee Conner had paid, then some 4 1/2 years earlier, to Sawyer and Worcester, even though that fee had at that time been amicably distributed between Worcester and Sawyer in accordance with their relative respective efforts in relation to their services *not* encompassed by Conner's contingency representation.

After Sawyer was subsequently informed of the Judge Designate's aforesaid 'in-chambers rulings,' the Judge Designate was apprised by Sawyer's co-counsel that Sawyerwas refusing to acquiesce in those 'rulings.' [Sawyer

* Sawyer is aware of all this *only* because Sawyer's co-counsel just happened to see Worcester and his attorney speaking with the Judge that morning, and after the Judge waived him into the room in which they were meeting, he became aware of what was transpiring between Worcester, Worcester's attorney and the Judge.

-objected not only that the Judge's 'rulings' were wrong, but also that she had not been afforded *any trial* in the matter, and -- notwithstanding her co-counsel's animated protests that there was absolutely no point in Sawyer going through a trial in the matter in view of the fact that the Judge had already made it perfectly clear what his rulings were going to be -- Sawyer remained persistent that her objections must be made clear *on the record*] so that she would have some basis upon which to pursue an appeal of the Judge's actions.]

Then being escorted into chambers herself, Sawyer was there *repeatedly* apprised by the Judge, in a variety of manners, that it would make *absolutely no difference* what the evidence in the case would be, his rulings were *NOT* going to change, and that, for *Sawyer's* purposes, any trial of the matter would be but an exercise in futility.

Despite the Judge's protracted efforts to strong-arm her into acquiescing in his 'rulings,' Sawyer remained unwavering that she could not forego a trial of the matter, and simply repeatedly explained to the Judge that she was *not* trying to 'defy' him, and that the matter was *NOT ABOUT MONEY* to her, * but that she could not forego her day in court because her *name* had been disparaged by Conner's attorney's verbal aspersions against her -- and even by the very fact that a rescission suit had been filed against her, since one is not entitled to rescission of a contract absent *some* type of unfair dealing, and that the trial on Conner's complaint would be Sawyer's *one* public opportunity to state the truth of the matter, and that she had, in fact, not dealt with Conner other than entirely fairly, and that she just had to trust that the Judge, after hearing the evidence in the case, would rule on Conner's prayer for rescission in accordance with the Judge's *true* belief about whether she had dealt with Conner inappropriately or unfairly in any manner.

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* Sawyer so stated because the Judge had, at one point, flatly stated to her "Miss Sawyer, you are *NOT* going to get *ANY MORE MONEY EVEN IF YOU DO GO TO TRIAL*!"

Obviously annoyed with Sawyer (the *only* person who *hadn't* acquiesced in his pre-trial 'rulings'), the Judge *finally* stated "well, I *have* to *let* you have a trial if you *insist* on having one," even though it was clear that his 'rulings' were *NOT* going to change. *

What served as the trial on Conner's Petition then followed. At its conclusion, even though *no evidence whatsoever* had been presented to support an award of rescission, ** the Judge Designate ruled from the bench *just* as he had said he would pre-trial, and awarded Conner the maximum relief Conner had sought, to wit: A) rescission of the entirety of Conner's fee contract (albeit *NOT* on any ground asserted in Conner's Petition) and, in accord with Conner's attorney's earlier statement in chambers that such would be a "reasonable" fee for Conner's contingency representation, B) a declaration that the "reasonable" fee for Conner's contingency representation was the sum Conner had previously paid Sawyer (except rounded off to the next lower whole thousand dollar amount).

Then, *in addition to* the relief for which Conner had prayed, and with absolutely no statutory or other authority

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* For example, after reiterating to Sawyer at one point that he *WAS* "going to award rescission," the Judge had waived his hand past her [he having directed Sawyer to sit directly in front of him] and, gesturing to the other attorneys in the room behind her, asked: "By the way, can any of you think of a reason I can state for that?" -- even though it was by then likely *hours* after the Judge had *first* announced that he *was* going to award rescission of Conner's fee contract!

** In point of fact, the testimony at Conner's trial was actually quite flattering of Miss Sawyer, referencing in particular Sawyer's great care and thoroughness in her interactions and conversations with Conner, as well as the outstanding result she had achieved for Conner.

Most notably, moreover, even though Conner attended the entirety of the trial and was well able to testify on his own behalf, Conner did not even take the witness stand, and there was no evidence whatsoever presented to the effect that Conner had not understood the content of his fee contract or that his contract had been unfair in any way.

to assess such a penalty * against Sawyer, the Judge Designate ordered Sawyer to pay Conner interest *at the legal rate* over the preceding two year period on the approximate $100,000.00 Sawyer had been holding in escrow pending the resolution of Conner's rescission suit -- and even though the *actual* interest which had accrued on those funds had been at the "going" rates during that time in the range of *1 1/2%*! The penalty thereby *sua sponte* assessed by the Judge against Sawyer (the differential between the interest *actually* accrued on the monies Sawyer had been holding, and interest calculated thereon at the *legal* rate was somewhere in the approximate range of $15,000.00!) **

After announcing the aforesaid 'rulings' in open court, the Judge exited the bench. Nonetheless, the Judge abruptly returned to the courtroom a few minutes later and -- referring to Worcester as *"THE CROSS-COMPLAINANT"*-- announced that he did *"not even see why he needed to hear any evidence to decide 'the disputes' between Worcester and Sawyer"* and that he was *already* prepared to rule on "those points!" The Judge then proceeded to state that "Worcester had *NOT* terminated his representation of Conner" and that "because there was no agreement between Sawyer and Worcester respecting the allocation of the contingency fees between them, Worcester was entitled to *50%* of the Conner contingency fees."

Sawyer's protests that there were no disputes between Worcester and her before the Court for adjudication and

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* The only state statutory proviso relating to awards of pre-judgment interest was, by its very terms, inapplicable to Conner's suit.

** Because the Judge had forgotten to order Sawyer *from the bench* to pay to Conner the $10,000.00 Conner had previously paid to her and Worcester, Conner's attorney thereafter reminded him in chambers that he had forgotten to order Sawyer to do so, and the Judge reaffirmed in chambers his prior directive in that respect. [Notably, it was Worcester who thereafter apprised the Court that that $10,000.00 should serve as a partial offset of the fees to which the Judge had declared Worcester entitled.

that, as the Court had *already* been apprised, * there were even stipulations of counsel that *NO* dispute between Worcester and Sawyer *was even to be referenced* at the time of Conner's trial -- were all to no avail. The Judge just persisted that he was already ready to rule on 'the Worcester-Sawyer points.'

Sawyer, on the other hand, continued to press that she did not even know *which* of Worcester's varying verbal claims Worcester intended to pursue, that his verbal claims had been completely contradictory in nature, and that no rulings could be made by the Court *anyway* in the absence of an evidentiary hearing on the matter. In response, the Judge Designate finally relented somewhat from his clearly intended purpose, but only to the extent of stating that he was going to take a lunch break and that, when he returned, he would "hear any evidence" that Sawyer and Worcester wanted him to consider; including "any evidence" in support of Sawyer's "theory" that Worcester had withdrawn from Conner's contingency litigation. Nonetheless, the Judge Designate *simultaneously* announced that the hearing in that regard would be over by 4:00 p.m. that day -- and even specifically stated "I *will* be issuing my rulings on the Worcester-Sawyer 'issues' *this afternoon*."

Sawyer then repeatedly protested that she *could not possibly* be prepared for any trial against Worcester that day, citing, as one example in that regard, that considerable evidence she expected would be relevant were either at her office in Leesburg or at her home in Fairfax that day, and that it would be impossible for her to retrieve those documents in time for any trial that afternoon. [Such round-trip travel time alone would have taken the remainder of the afternoon.]

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* The Judge Designate had previously been specifically apprised of the stipulations of counsel to the cause after Worcester, in a response *beyond* the scope of a question asked him by his attorney, via *very* obviously pre-rehearsed testimony, gratuitously and yet very pointedly testified that he had never terminated his services to Conner's contingency litigation.

Sawyer's various protests were, however, all to no avail, and the Judge exited the bench for a belated lunch break.

The Judge Designate returned to the bench at approximately 3:00 p.m. that afternoon, and thereupon commenced to orchestrate the pretext of a "trial" between Worcester and Sawyer. He first constantly intervened into and cut-off Sawyer's attempts to question Worcester about his abandonment of Conner's contingency litigation, thereby preventing Sawyer from obtaining crucial admissions from Worcester (whose face had turned -- and remained -- 'beet-red' once Sawyer began to question him about various matters which evinced his abandonment of the contingency litigation). Then, after Sawyer in frustration asked to 'take the stand' *herself*, the Judge likewise constantly intervened into her attempts to testify, and ultimately prevented her even from testifying as to facts which evinced that Worcester had abandoned Conner's contingency litigation and as to Worcester's own verbal admissions to that effect following Sawyer's settlement of Conner's case (and as to many other relevant facts to which Sawyer had intended to testify). *

Then, *LITERALLY* within just a few minutes after Sawyer had taken the witness stand, the Judge Designate abruptly ordered Sawyer to step down from the stand and *immediately* 'ruled' that Worcester had never terminated his service to Conner's contingency litigation, that there had been no express agreement between Worcester and Sawyer respecting the division of fees, ** and that Worcester was therefore

* Notably, even though Conner had been under subpoena by Sawyer that day, Conner was *himself* unavailable to testify as to Worcester's abandonment of his contingency case because, *just seconds* before the Judge Designate announced his intent to rule on "the Worcester-Sawyer points" that day, the Judge had *specifically* told Conner that Conner was free to leave the Courthouse.

** Prior to his lunch break, the Judge, in his banter with Sawyer and her co-counsel, had made it perfectly clear that he would not consider *any* implied-*in-fact* agreement between Worcester and Sawyer respecting their prospective division of fees, and *regardless* of their prior pattern of practice in such respects.

entitled, based upon a contract implied by law, to 50% of Conner's contingency fees. Then, based upon those proclamations, the Judge ordered Sawyer to pay Worcester $62,000.00. He thereafter inserted his order to Sawyer to pay Worcester $62,000.00 in severable paragraphs set out towards the end of the Final Decree entered in the cause Conner v. Sawyer and Worcester, In Chancery 93-149.

Thereafter, even though Worcester had never filed any cognizable complaint against Sawyer in *any* court, and even though there has *never* been *any* such cause in the Circuit Court of Frederick County, Virginia, Worcester filed pleadings in the Frederick County Circuit Court scheduling Debtor Interrogatories against Sawyer in a fictitious cause: "*Dean S. Worcester, Plaintiff v. Ava M. Sawyer, Defendant, In Chancery 93-149.*"

Because Sawyer did not voluntarily appear to respond to Worcester's Debtor Interrogatories in the aforesaid fictitious cause, Rules to Show Cause and capiases were thereafter issued by the Frederick County Circuit against Sawyer, but out of the cause *Preston E. Conner, Sr., Complainant v. Ava M. Sawyer and Dean S. Worcester, Respondents, In Chancery 93-149!*

By a Special Appearance of Counsel on Sawyer's behalf in Preston E. Conner, Sr. v. Ava M. Sawyer and Dean S. Worcester, Respondents, In Chancery 93-149, Motions to Vacate Conner's Judge Designate's severable order to Sawyer to pay Worcester $62,000.00 and to Quash the *capias* that had issued against Sawyer were thereafter filed in the Frederick County Circuit. *

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* Sawyer was concerned that if she *personally* appeared in Conner v. Sawyer and Worcester to represent herself that her appearance would be ruled by the Court a waiver of her objection that the Frederick County Circuit had never had *in personam* jurisdiction over her in relation to *any* claim of *Worcester* against her.

The aforesaid Motions to Vacate and Quash and the extensive legal Memoranda in Support filed on Sawyer's behalf raised numerous jurisdictional and other U. S. Constitutional Fourteenth Amended Due Process objections to the validity of the severable $62,000.00 judgment which had been awarded to Worcester against Sawyer. **

The local Clerk of Court thereafter requested a different, retired Circuit Court Judge to adjudicate both Sawyer's Motions and the capias. A bifurcated procedure was thereafter agreed upon by that Judge [The Honorable Arthur W. Sinclair], and counsel for Sawyer and Worcester that those of Sawyer's objections which could be decided on

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** *Very* succinctly, those Motions (and Memoranda in Support) primarily asserted that the judgment awarded Worcester was void *ab initio* because 1) Worcester had filed no Bill, Cross-Bill, nor any other judicially cognizable complaint upon which relief could be accorded Worcester, 2) Worcester and Sawyer were not adverse parties in the cause, and there was therefore no justiciable controversy between them before the court for adjudication, 3) the award to Worcester was based upon putative adjudications of facts and issues which had in no wise been placed in controversy in the cause, 4) the relief awarded Worcester contravened Worcester's *own* assertions in the cause respecting his alleged entitlement to compensation [which was that he was entitled to compensation for the service he had rendered at his hourly rate (or on a *quantum meruit* basis) -- claims of no more than $4,000.00-$7,000.00], and, 5) for a plethora of reasons, including A) the absence of any written complaint asserting a cause of action on Worcester's behalf, B) the fact that Sawyer had received no prior notice of the claim adjudicated against her -- or even that any claim of Worcester *was* to be adjudicated that day, and C) that Conner's Judge Designate had *not* served as an impartial arbiter in the matter, the Conner Court's award of a $62,000.00 money judgment to Worcester against Sawyer violated Sawyer's rights under the Fourteenth Amendment to the U.S. Constitution to the Due Process of Law, and violated as well Sawyer's Virginia Constitutional and statutory rights to trial by jury and to seek to have factual issues determined "out of chancery," etc., etc.

the record as matters of law were scheduled for oral argument first, and then -- but *only* in the event that the Judge were to rule adversely to Sawyer on *each* of *those* issues -- an evidentiary hearing would be scheduled for a subsequent date upon Sawyer's U. S. Constitutional Fourteenth Amendment Due Process objections to the validity of Worcester's judgment and other related objections requiring the presentation of evidence. [The bifurcated procedure agreed upon was designed to obviate the need for any unnecessary and distasteful hearing respecting the untoward behavior of Conner's Judge Designate, such as to evince, for example, that he had not served as an impartial tribunal.]

After hearing oral argument on Sawyer's jurisdictional objections as matters of law to the validity of Worcester's $62,000.00 judgment against her, yet *without* addressing the merits of *even one* of those objections, Judge Sinclair ruled that, because Conner's Petition had asked in an alternate prayer for relief -- albeit *NOT* the prayer under which Conner had been awarded relief in the cause -- that the Court determine the reasonable attorneys fees "payable to *either* or *both* [notably, *NOT* "*each*"] of the attorneys," the Conner Court *had* had the authority to award to Worcester the $62,000.00 money judgment against Sawyer. *

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* In order to arrive at his ruling that *Conner's* Complaint had introduced into controversy in the cause a cognizable complaint on *Worcester's* behalf -- even though the cause was *not* an interpleader action, Judge Sinclair *necessarily* construed Conner's words "either," "both," or "either or both" as equating the word "each" -- a meaning which obviously may not properly be ascribed to those words.

Sinclair's ruling likewise necessarily ignored the fact that Conner's "either or both" wording applied only to Conner's alternate prayer pertaining to the possibility that only a partial award of rescission would be granted. [That wording did *not* pertain to Conner's alternate prayer relating to rescission of the *entirety* of his fee contract -- the relief actually awarded Conner.] Finally, Judge Sinclair's "either or both"

-- FOOTNOTE CONTINUED ON NEXT PAGE --

Then, after Judge Sinclair declined to hear any argument as to the various reasons why his ruling was untenable and incorrect, counsel specially appearing on Sawyer's behalf attempted to request that Judge Sinclair schedule the previously agreed-upon evidentiary hearing on Sawyer's U. S. Constitutional Due Process objections to the validity of Worcester's judgment. The bifurcated procedure previously agreed-upon notwithstanding, however, Judge Sinclair refused to schedule any such hearing, he hastily stated instead that he did not believe such matters as Sawyer's Due Process objections to Worcester's judgment were jurisdictional in nature, and therefore the Worcester judgment was final [and, *ergo*, the implication being that Worcester's judgment was for such reason no longer subject to collateral attack].

Accordingly, without expressly so stating, Judge Sinclair's ruling was that a state court civil judgment is valid even if it has been entered in violation of the requirements of the Due Process of Law Clause of the Fourteenth Amendment to the U. S. Constitution!

Judge Sinclair thereafter announced his refusal to hear any further proceedings in the cause, leaving the matter to *another* Judge to rule upon the contempt charge against Sawyer. * The Honorable Dennis Hupp] was then asked by the Clerk of Court to act in the matter. Refusing to reconsider Judge Sinclair's rulings, Hupp ruled Sawyer in civil contempt of court as a result of her refusals to have voluntarily appeared to divulge her personal private financial information to Dean Worcester pursuant to his debtor interrogatory pleadings in the fictitious Frederick County

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FOOTNOTE CONTINUED FROM PRIOR PAGE:
ruling *also* totally ignored the fact that his *post*-trial interpretation of Conner's Complaint was completely *inapposite* to the manner in which all counsel to the cause, and the trial court itself, had interpreted Conner's Petition *both pre-trial and at the trial* on Conner's Complaint -- and was, therefore, a construction of Conner's Complaint not available post-trial to justify the trial court's extra-jurisdictional action.

Circuit cause, Dean S. Worcester, Plaintiff v. Ava M. Sawyer, Defendant, In Chancery 93-149 As a result, Sawyer was ultimately incarcerated for 36 days.

Sawyer's Petition for Appeal to Judge Sinclair's and Judge Hupp's rulings was denied by the Supreme Court of Virginia on January 10, 2004, and her timely Motion for Rehearing was denied on March 16, 2004. Sawyer raised in her aforesaid Petition for Appeal and Motion for Rehearing the issues raised under her Petition for Certiorari to this Honorable Court.

Sawyer now appeals to this Honorable Court, on U. S. Constitutional Fourteenth Amendment Due Process grounds, Judge Sinclair's rulings and her two convictions of contempt of court, both of which convictions were dependent upon the validity of Judge Sinclair's rulings.

REASONS WHY CERTIORARI SHOULD BE GRANTED

In the cause here subject to scrutiny -- one *not* an interpleader action -- a $62,000.00 money judgment was awarded to a defendant who had never filed *any* judicially cognizable complaint for relief. Moreover, that defendant was awarded the $62,000.00 judgment even though *no* party to the cause had *ever* asserted *any cause of action* on that defendant's behalf in *any* pleading in the cause (and, moreover, the Complainant had not asked that the defendant be awarded any affirmative relief)! As a result, Petitioner Sawyer now has a $62,000.00 money judgment against her -- in favor of a person who had never even filed a complaint against her! Moreover, such is the case even though *neither* the 'claim' *nor even one* 'factual issue' asserted in support by the Judge who then purported to 'adjudicate' those claims/ issues had been asserted in *any* pleading in the cause -- and

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* Although Sawyer immediately filed an appeal to the Virginia Supreme Court in relation to Judge Sinclair's rulings, her appeal was denied without prejudice on the basis that such appeal had been taken prematurely. See, Appendix.

said claim/issues even contradicted Defendant Worcester's own allegations in the cause!

Although it is *seemingly* obvious that such a situation could not possibly exist absent violation of the most fundamental requirements of Due Process of Law, prior ruling of this Honorable Court lends real cause for doubt in that regard.

Even though Reynolds v. Stockton 140 U.S. 254 (1891) is typically cited for the proposition that 'where a court enters a judgment or awards relief beyond the prayer of a complaint or the scope of its allegations, the judgment granting such excessive relief is open to collateral attack,' in dictum, Reynolds quoted with clear approval prior legal precedent standing for the proposition that such rule obtains *only* when the judgment in issue was entered by default. Id at 266. In other words, Reynolds actually appears to have endorsed, albeit by dictum, the proposition that, *if a defendant happens to be in the courtroom* when a judgment beyond the jurisdiction of a court is entered, the excessive portion of such judgment is *not* subject to a subsequent collateral attack -- and is, obviously, therefore *not* void even though entered beyond the jurisdiction of the court. There was, however, no Constitutional Due Process challenge to the validity of the excessive judgment under scrutiny in Reynolds, and subsequent, but more generalized rulings of this Court declaring "reasonable notice" to a litigant an essential element of the Due Process of law (to wit: the 'hornbook' law of which the public is much more aware), appear to clearly contradict the dictum in Reynolds. Unfortunately, however, there have been precious few instances since Reynolds in which this Court has specifically addressed itself to the question of the extent to which a court may lawfully adjudicate issues/claims not raised by the pleadings in a cause, and even those rulings have done little to declare inroads into the Reynolds dictum. Even In re: Ruffalo, 390 U.S. 544 (1968) particularly as same was subsequently interpreted by this Court in Zauderer v. Office of Disciplinary Counsel of

the Supreme Court of Ohio, 471 U. S. 626 (1985) has done little to proclaim litigants Constitutionally protected from abuse by malfeasant state court judges who decide to enter judgments completely beyond the bounds of the issues and claims brought before them for adjudication. However, when a litigant, such as Sawyer, has been subjected to an unlawful adjudication by virtue of the clear overstepping of a court's jurisdiction, that litigant should not be subsequently told that such excessive judgment, even though clearly entered beyond the court's jurisdiction, is neither void nor subject to collateral attack for the sole reason that the litigant happened to be present to witness the court's abuse of its judicial power. Clearly, when an individual is unlawfully so 'railroaded' by a court, the mere fact that a litigant was present to witness the court's abuse of his/her Constitutional rights does not supply any viable justification for a subsequent ruling that such litigant does not have the same rights to collaterally attack the extra-jurisdictional judgment or decree as a less vigilant defendant would have -- and *particularly* not when, as in the case at bar, such person cannot possibly rightfully be said to have waived his/her right to complain of the court's malfeasance.

The unclear state of the law of this land on such a crucial jurisprudential issue is, in and of itself, compelling reason for this Court to exercise of this Court's oversight function as the ultimate guardian -- *and definer* -- of the U. S. Constitutional rights of the citizens of this land. Moreover, if, indeed, fundamental rules of law pertaining to jurisdiction, and Constitutionally mandated Due Process 'reasonable notice,' and the right to collaterally attack extra-jurisdictional judicial decrees do *not* apply to litigants who appeared in the cause in which their legal rights were violated, it would indeed be *exceedingly* inappropriate for this Court not to award certiorari in this cause, as even very knowledgeable attorneys -- and much less the typical *pro-se* litigant -- are not typically of aware that litigants who have been present to witness clear violations of their rights by a court do not have the same

rights to collaterally assail the unlawful acts as do other litigants who, for whatever reason, did not happen to enter an appearance in the cause.

Moreover, Certiorari is also here in order in exercise of this Court's oversight function as the ultimate guardian of the U. S. Constitutional rights of the citizens of this land not only because a State Circuit Court so far departed from the accepted and usual course of judicial proceedings and clear mandates of the U. S. Constitution in granting Defendant Worcester the $62,000.00 money judgment awarded him, but also because the Supreme Court of Virginia has now *expressly sanctioned* the actions of the Circuit Court in doing so! [Even though Your Petitioner was not granted an appeal by the Virginia Supreme Court, the Virginia Supreme Court nevertheless *specifically affirmed* the lower court's rulings holding Worcester's judgment valid!]

Finally, in ruling that the affording of due process of law *NOT A REQUISITE TO* the validity of a civil court judgment, * the Supreme Court of Virginia has directly contradicted multitudinous rulings of this and other Courts that *both* jurisdiction *and* due process of law are requisites to a valid and enforceable civil court decree. Cooper v. Smith, 776 P.2d 1178 (1989);E. B. Jones Construction Co. v. City and County of Denver, 717 P.2d 1009 (1986); Schwartz v. United States, 976 F.2d 213 (4th Cir. 1992); In re: Four Seasons Securities Law Litigation, 502 F.2d 834(10th Cir. 1974); accord, Williams v. Tooke, 108 F.2d 758 (5th Cir. 1940); Windsor v. McVeigh, 93 U.S. 274; Rooker v. Fidelity Trust Co., 263 U.S. 413, 415 (1923)

CONCLUSION

For all of the reasons above set forth, and also in the most laudable interests of restoring the rule of law and according justice to Your Petitioner in this cause, Your Petitioner humbly asks that this Honorable Court grant the writ of certiorari for which she prays in this cause.

RESPECTFULLY SUBMITTED,
AYA MAUREEN SAWYER